

MV 96-5

Tax Type: MOTOR VEHICLE USE TAX

Issue: Rolling Stock (Purchase/Sale Claimed To Be Exempt)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	
)	
v.)	No.
)	IBT
)	NTL
TAXPAYER,)	
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: TAXPAYER, taxpayer, appeared *pro-se*.

Synopsis:

This matter arose on the timely protest of the taxpayer on August 11, 1995, to the Department's assessment for unpaid motor vehicle use tax issued on June 14, 1995. At issue is the question of whether the truck which was purchased qualifies for the "rolling stock" exemption of the Use Tax Act, 35 ILCS 105/3-60, as being used by an interstate carrier for hire. After consideration of the arguments made and evidence presented, it is my recommendation that this matter be resolved in favor of the Department.

Findings of Fact:

1. The Department's *prima facie* case, consisting of Notice of Tax Liability No. XXXXX issued on June 14, 1995 and served upon the person of TAXPAYER, was admitted into evidence under certificate of the Director as Department's Group Ex. No. 1, on my own motion. (Tr. pp. 3-4).

2. Taxpayer, TAXPAYER produced no documentation identified with his books and records at the hearing (September 25, 1996) and other than his own statements, presented no acceptable evidence showing or tending to show that the truck in question was used in interstate commerce for hire.

3. Upon my suggestion, taxpayer was given a period of seven days to produce, by facsimile transmission, the following items: a) a letter from FARMS of Wisconsin verifying the transportation of milk by TAXPAYER in interstate commerce; b) a copy of the taxpayer's ICC certification; and c) the bill of sale or receipt of purchase for the truck in question in order to verify the purchase price. (Tr. pp. 9-10)

4. Taxpayer was additionally given the facsimile numbers of both the Chicago and Springfield locations of the Office of Administrative Hearings as well as my own phone number in case he had difficulty in obtaining the requested items. (Tr. p. 11)

5. As of this writing, it has been more than 14 days since the hearing and taxpayer has failed to transmit any of the documentation promised.

Conclusions of Law:

Under the provisions of 35 ILCS 120/5, (the ROT Act), as that section is incorporated into 35 ILCS 105/12, (the Use Tax Act), the following language is applicable:

In making any [such] determination of tax due, it shall be permissible for the Department to show a figure that represents the tax due... Proof of such determination by the Department may be made at any hearing before the Department or in any legal proceeding by a reproduced copy or computer print-out of the Department's record relating thereto in the name of the Department under the certificate of the Director of Revenue... Such certified reproduced copy or certified computer print-out shall, without further proof, be admitted into evidence before the Department or in any legal proceeding and shall be prima facie proof of the correctness of the amount of tax due, as shown therein. (emphasis added)

Once the notice of tax liability was admitted into evidence, it was incumbent upon the taxpayer to provide sufficient evidence of a documentary nature to show that the tax liability determined by the Department was incorrect. Particularly in circumstances where an exemption from tax is being

claimed, the burden is upon the taxpayer to show by a preponderance that the tax is not due.

By the failure of this taxpayer to supply the finder of fact with any substantive documentation which acts to corroborate the claim that the truck in question qualifies for the rolling stock exemption, the prima facie case of the Department has not been overcome and must stand as a matter of law.

It is therefore recommended that NTL XXXXX be affirmed in its entirety and a final assessment be issued in accord with this decision.

Administrative Law Judge